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of Bernard L. Madoff Investment Securities LLC
and the Estate of Bernard L. Madoff*

Attorneys for Picower Parties

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

-against-

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

SUSANNE STONE MARSHALL; ADELE FOX;
MARSHA PESHKIN; RUSSELL OASIS,

Plaintiffs,

v.

CAPITAL GROWTH COMPANY; DECISIONS,
INC.; FAVORITE FUNDS; JA PRIMARY
LIMITED PARTNERSHIP; JA SPECIAL
LIMITED PARTNERSHIP; JAB
PARTNERSHIP; JEMW PARTNERSHIP; JF
PARTNERSHIP; JFM INVESTMENT
COMPANIES; JLN PARTNERSHIP; JMP
LIMITED PARTNERSHIP; JEFFRY M.
PICOWER SPECIAL COMPANY; JEFFRY M.
PICOWER, P.C.; THE PICOWER
FOUNDATION; THE PICOWER INSTITUTE

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Case No. 09-11893 (SMB)

Adv. Pro. No. 15-01293 (SMB)

**APPELLEES IRVING H. PICARD,
TRUSTEE, AND PICOWER
PARTIES' JOINT COUNTER-
STATEMENT OF THE ISSUES TO
BE PRESENTED ON APPEAL AND
COUNTER-DESIGNATION OF
ADDITIONAL ITEMS TO BE
INCLUDED IN THE RECORD ON
APPEAL**

OF MEDICAL RESEARCH; THE TRUST F/B/O GABRIELLE H. PICOWER; BARBARA PICOWER, individually and as Executor of the Estate of Jeffrey M. Picower, and as Trustee for the Picower Foundation and for the Trust f/b/o Gabrielle H. Picower, and IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC,

Defendants.

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Irving H. Picard, the trustee (the “Trustee”) for the liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act (“SIPA”), 15 U.S.C. § 78aaa *et seq.*, and the substantively consolidated estate of Bernard L. Madoff, individually, by and through his undersigned counsel, and the Picower Parties,¹ by and through their undersigned counsel (the “Trustee” and “Picower Parties” are collectively referred to as the “Appellees”), respectfully submit the following joint counter-statement of the issues (the “Counter-Statement”) and joint counter-designation of additional items to be included in the record on appeal (the “Counter-Designation”) in connection with the appeal by Susanne Stone Marshall, Adele Fox, Marsha Peshkin, and Russell Oasis, each individually and putatively on behalf of similarly situated classes (the “Appellants”), from the Memorandum Decision Denying Motion for Declaratory Judgment and Dismissing Complaint (the “Memorandum Decision”),

¹ The “Picower Parties” are: Capital Growth Company; Decisions, Inc.; Favorite Funds; JA Primary Limited Partnership; JA Special Limited Partnership; JAB Partnership; JEMW Partnership; JF Partnership; JFM Investment Companies; JLN Partnership; JMP Limited Partnership; Jeffrey M. Picower Special Company; Jeffrey M. Picower, P.C.; the Picower Foundation; the Picower Institute of Medical Research; the Trust F/B/O Gabrielle H. Picower; Barbara Picower, individually, and as executor of the estate of Jeffrey M. Picower, and as Trustee for the Picower Foundation and for the Trust F/B/O Gabrielle H. Picower.

entered on March 7, 2017 (ECF No. 49) by the United States Bankruptcy Court for the Southern District of New York (Bernstein, J.) in the above-referenced adversary proceeding:

COUNTER-STATEMENT OF THE ISSUES TO BE PRESENTED ON APPEAL

The Appellees hereby submit the following joint counter-statement of the issues on appeal:²

1. Whether the Bankruptcy Court abused its discretion by enforcing the Permanent Injunction to enjoin the Appellants, and anyone acting on behalf of or in concert or participation with them, from prosecuting the Fox III Complaint.
2. Whether the Bankruptcy Court clearly erred in finding that the Fox III Complaint stated derivative or duplicative claims in violation of the Permanent Injunction.
3. Whether the Bankruptcy Court properly denied the Appellants' motion for declaratory judgment and properly dismissed the Appellants' complaint for declaratory judgment.

**COUNTER-DESIGNATION OF ADDITIONAL ITEMS TO BE INCLUDED
IN THE RECORD ON APPEAL**

The Appellees hereby jointly counter-designate the following additional items to be included in the record on appeal:

<u>Item No.</u>	<u>Proceeding No.</u>	<u>Docket No.</u>	<u>Description</u>
1	15-01293 (Bankr. S.D.N.Y.)	46	Statement /Notice of Supplemental Authority filed by David J. Sheehan on behalf of IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff Investment Securities LLC. (Attachments: # 1 Exhibit A) (Sheehan, David) (Entered: 01/26/2017)
2	15-01293 (Bankr. S.D.N.Y.)	55	Order Signed On 3/28/2017. (related document(s)52, 49) (Barrett, Chantel) (Entered: 03/29/2017)

² All defined terms not otherwise defined herein have the meaning given to them in the Memorandum Decision (ECF No. 49).

Dated: April 17, 2017
New York, New York

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By: /s/ Marcy R. Harris

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